Working Group on Bribery in International Business Transactions (CIME)

PROGRAMME OF WORK 2001-2002

(Note by the Secretariat)

This note has been approved by the Working Group under written procedure.
PROGRAMME OF WORK 2001-2002

I. Introduction and Proposed Procedure

1. Under the Organisation's procedures, committees are required every two years to formulate, against the background of the Organisation's broad priorities [see C(2000)36], a detailed work programme for the upcoming two-year period, i.e. 2001-2002. The bi-annual budgetary process allows for "mid-term corrections" and hence decisions made at this time can be revisited in 2001. Decisions on the main lines of a programme of work are in the nature of proposals. Final decisions are the prerogative of the Council. On the basis of the Working Group’s deliberations, the Secretariat will prepare the relevant sections of the Proposed Programme and Budget of the Organisation for 2001-2002, which the Secretary-General is to submit to the Council. This year, the Working Group has been requested to state its priorities concerning those activities that should receive greatest emphasis when the work programme is transmitted to the Secretary-General and to Council. This requirement is of particular importance for the reasons indicated in Section IV.

2. This note takes account of the Working Group’s discussion at its meeting on 5-7 June 2000. The Group noted that the activities outlined as part of its proposed Programme of Work emanate from the anti-bribery instruments, i.e., the Convention and the 1997 Recommendation, as well as from specific Council mandates. Having reviewed its present budgetary resources, the Group concluded that it was not in a position to fulfil these mandates without a substantial increase in present funding (see paragraphs 34-35 below). The Group agreed on language to be inserted in the Report to Ministers which would clearly signal the need for increased resources. In the event the Council rejects the request for increased resources under Part I, the immediate result would be that only the monitoring Phase 1 would go forward, as well as an outreach event. The Group would then need to consider other alternate ways of providing for the necessary resources.

3. Next Steps. The Organisation's timetable for the preparation of the work programme and budget (PWB) for 2001-2002 implies that the Secretariat will finalise the Working Group’s submission for the Secretary-General in July, with the proposed PWB being submitted to Council in October. In light of this schedule, the Group requested the Secretariat to take account of its discussion in June and to circulate the revised document to the Working Group for approval under written procedure. A final text will be prepared taking account of comments received from Delegations, which will be sent to the CIME for information and then to the Secretary-General.

II. Activities

Activity 1: Implementation of the Convention

1.1 Monitoring

4. The Working Group is responsible for regular monitoring of progress in ratifying and implementing the Convention. At present, 21 countries have deposited their instruments with the Secretary-General.
Phase 1


6. The present mandate calls for completion of the legislative review of all 34 signatory countries. The Report to Ministers in June 2000 summarised the results of the Phase 1 examinations of the 21 countries reviewed. Thirteen countries are still to be examined in the course of the year, as soon as implementation legislation is finalised. The results of these reviews will be included in the 2001 Spring Ministerial report. Some delegations would like to see a cut off date for Phase 1 evaluations by the Ministerial meeting 2001.

Phase 2

7. In December 1999 and February 2000, the Working Group examined a note outlining Phase 2 monitoring procedures and the draft terms of reference for on-site visits [DAFFE/IME/BR(99)33/REV1]. The Group will consider approval of the terms of reference and the drafting of the Phase 2 questionnaire at its October 2000 meeting in order to permit Phase 2 examinations for some countries in time for the Ministerial report in 2001. Prior to the Phase 2 evaluations, the Group will review whether legislative amendments have been made to address the deficiencies identified.

1.2 Comparative legal analysis (horizontal issues)

8. In the course of the first round of the self and mutual evaluation process, the Group recognised the need to return to some issues on a horizontal basis once a more substantial number of countries had been reviewed. Delegates felt that valuable lessons could be drawn from a horizontal analysis of the treatment of certain issues in different countries. This information is necessary as part of evaluating whether a country has met a particular standard or not. A list of horizontal issues to be examined by the Group was included in the recent Report to Ministers on implementation of the Convention [C/MIN(2000)8].

1.3 Report to Ministers

9. The Working Group reports annually to Ministers on the implementation of the Convention. The reports in Spring 2001-2 will likely report on the completion of Phase 1 monitoring and the start-up of Phase 2, as well as how countries have implemented recommendations of the Group emanating from the Phase 1 examinations. It should also account to Ministers on work concerning the other issues relating to bribery (see Activity 2 below).

Activity 2. Issues relating to specific mandates

2.1 Review of the 1997 Revised Recommendation

10. Article X of the Recommendation instructs the CIME to review the Revised Recommendation “within three years after its adoption.” The Recommendation was adopted in May 1997. The review can provide a comprehensive overview of the different substantive areas covered by the Recommendation, including criminalisation of bribery, tax deductibility, accounting, follow-up, and co-operation with non-members. The function of the review would be to determine from a policy perspective, whether the areas are adequately covered to ensure the effectiveness of the instruments. This review should take account of some issues arising out of Phase 1 monitoring. The Group should consider whether to start this Review in
time for a progress report to Ministers next year and completion of the Review by the Ministerial of 2002. The Group could commence with a stock-taking of where the various issues that need addressing stand. Consequently, the Group could set a clearer timetable for when each topic should be taken up.

--- Civil law remedies

11. The 1997 Revised Recommendation specifically calls on countries to examine civil laws and regulations so that bribery would be illegal (Art. II vi). This issue would require comparative analysis of the situation in member and non-member countries. It is proposed to review the work of the Council of Europe which has developed a civil law convention to determine the implications for OECD Convention countries and whether further work should be undertaken in this context. A half-day meeting to examine this issue with Council of Europe representatives could be held at a time to be determined by the Group.

--- Private sector bribery

12. The 1997 Revised Recommendation (Art. VIII) calls for the examination of the feasibility of broadening the scope of the work to combat international bribery to include private sector bribery. The results of the ICC’s study on private sector bribery are not expected until Fall 2000. At that time, the Group may wish to review the progress of this work and decide on how to take this issue forward.

--- Accounting

13. In addition to countries’ obligations relating to accounting under the Convention, the 1997 Recommendation asks countries to take specific steps covering accounting, external audit and internal company controls. The Working Group is responsible for monitoring compliance with the accounting provisions of the Convention and 1997 Recommendation in both Phase 1 and Phase 2. Independently, Transparency International recently surveyed the requirements and current practices of several signatory countries concerning the accounting and auditing provisions of the Convention and the 1997 Recommendation. These reviews focused on the keeping of books and records, internal controls, and auditing practices. Several preliminary findings were discussed during consultations with the Group and the private sector, TUAC, and civil society. TI will endeavour to complete the study for other countries having ratified the Convention and discussions on the issues raised by the study should be examined again after Fall 2000.

2.2 Five issues relating to corruption

14. This is intended as covering the five issues mandated by the Negotiating Conference on the Convention and on which Ministers requested continued work in their 1999 communiqué: bribery acts in relation with foreign political parties; advantages promised or given to any person in anticipation of that person becoming a foreign public official; bribery of foreign public officials as a predicate offence for money laundering legislation; the role of foreign subsidiaries in bribery transactions; and the role of offshore centres in bribery transactions.

15. This year, special emphasis was placed on corruption issues relating to offshore financial centres as a result of several international initiatives focusing on this area. The Group determined that making bribery, as defined in the Convention, a predicate offence for money laundering is one way to ensure that certain offshore centre practices do not undermine the effectiveness of the OECD anti-bribery instruments. A recommendation to this effect has been made to OECD Ministers in 2000 to be forwarded to the appropriate international bodies and the Group has also recommended that FATF consider how to make existing due diligence standards more effective in the fight against corruption.
16. The Group should undertake to explore, with the Steering Group on Corporate Governance, developing mechanisms to prevent the misuse of corporate vehicles to shield information concerning beneficial owners. Furthermore, the Group will examine ways of elaborating norms for mutual legal assistance that may go beyond those in the Convention. In the Fall, the Group will need to consider how to address other issues relating to corruption particularly bribery in relation to political parties, or candidates, and the role of foreign subsidiaries in bribery transactions.

2.3 Reviewing developments in anti-corruption activities

17. The Working Group is mandated to continue to review developments relating to the implementation of the 1996 Recommendation on tax deductibility of bribes, export credits and aid-funded procurement. A manual for tax inspectors on non-deductibility of bribes is in preparation within the CFA. In response to proposals submitted by some Member countries, the Working Party on Export Credits agreed to maintain the process of exchanging information on how they are adapting their export credit systems in accordance with the OECD Convention to combat the bribery of foreign public officials. The Working Group will need to closely follow the discussions in the ECG and the work on non-deductibility in order to update Ministers on progress in these areas.

2.4 Issues in discussion with the private sector and TUAC

-- Solicitation

18. An Ad Hoc Group met with BIAC, TUAC, the International Chamber of Commerce and Transparency International to discuss different government actions that could be part of a process designed to help the private sector deal with solicitation. The elements identified included greater public recognition, the setting-up of bodies providing assistance to enterprises confronted with solicitation, the inclusion of the issue in the monitoring and follow-up mechanism to the OECD instruments, and organised concerted actions, including joint actions by governments, in exceptional cases. The Working Group should consider how to address this issue in the second phase of monitoring. The Group will continue discussion with consultation partners with a view to further considering other possible actions.

-- Whistle-Blowing

19. In December 1999, the OECD Labour/Management Programme organised a joint meeting of management and trade union experts on “Whistle-blowing to Combat Corruption”. The Working Group considered that the matter was of broader concern, touching upon issues of corporate responsibility. This is confirmed by the manner in which the issue of whistle-blowing has been treated in the recent negotiations to update the Guidelines. This issue will need to be given further consideration in the course of the Group’s review of the 1997 Recommendation and taking account of experience gained on the matter through the country examinations carried out under the phase 2 monitoring procedure.

Activity 3. Outreach and co-operation with other international organisations

20. The 1999 Ministerial communiqué instructs the OECD to “promote the objectives of the Convention world-wide and continue to work together with non-members, in co-operation with other international organisations, in the fight against bribery and corruption.” There are also specific references to outreach and non-members in both the Convention and revised Recommendation.
3.1 Accession of non-members to the Convention and the Recommendation

21. In considering the question of how to respond to non-members interested in the Convention, the Working Group adopted procedures and defined criteria for their participation in the Working Group and the Convention [DAFFE/IME(99)39/REV1]. The note was declassified by the CIME and its content included in the information note for non-members [DAFFE/IME/BR/WD(99)30/REV1]. The criteria include whether the applicant is a “major player” and whether the association will bring “mutual benefit”. In applying these criteria, certain essential economic, institutional and legal factors need to be taken into account.

22. The Working Group met with non-Member representatives on 5 June 2000. In addition to formal accession procedures and criteria, participants considered the idea of an anti-corruption declaration that could serve to indicate a country’s commitment to combat corruption both on a national and international level. Non-Members have been invited to provide comments on such a declaration which could be examined by the Group in October 2000. For countries requesting accession to the Convention and who have replied to a questionnaire concerning relevant factors for participation in the Convention, the Group would determine whether to recommend commencing accession procedures based on a preliminary review of those replies by the Ad Hoc Group on non-Members, and the timeframe for carrying out the examinations.

3.2 Regional Co-operation with non-Members

23. In seeking to broaden the discussion of the OECD Convention and related instruments with major stakeholders, a regional workshop for Asian and Pacific Basin Economies was held in Manila on 29-30 September to 1 October 1999, in co-operation with the ADB and partner organisations such as USAID and UNDP. Participants called upon the conference organisers, partner organisations, and other donors, to consider ways for advancing a regional anti-corruption agenda, including the possibility of organising a regular forum on anti-corruption activities in Asia and the Pacific. A follow-up conference is planned in Korea for the December 2000 with the possibility of a further Asian outreach event in Japan in 2001.

24. The Anti-Corruption Network for Transition Economies assists Eastern European and Former Soviet Union countries to put in place the framework conditions for effectively combating corruption by identifying appropriate political, institutional, and economic reforms. Linking international donors, key government officials and civil society representatives in an informal forum to exchange information about policies and best practices in this field, the Network supports continued anti-corruption strategies by reviewing anti-corruption actions taken in Network countries. It uses as benchmarks existing international instruments, best practices and regional initiatives.

25. The Group may wish to consider how to further regional co-operation with Latin America, particularly in the context of a possible monitoring mechanism now under consideration for reviewing the commitments under the OAS Convention. As a result of the informal 5 June meeting with non-Members, the possibility was envisaged to hold a regional meeting in Africa to raise public awareness and support anti-corruption efforts.

3.3 Consultations with governmental and non-governmental organisations

26. The Working Group will continue to hold regular consultations with business organisations, TUAC, and civil society. The Group may also meet with accounting and auditing firm representatives that have expressed an interest in meeting with Working Group members to discuss implementation of the accounting provisions in the Convention and the Recommendation. It is also important that the Group continue to maintain close working relations with organisations active in this area, particularly, the Council
of Europe, the World Bank, the WTO, the IMF, and the European Union, the UN and the OAS, all of which are invited as observers to meetings of the Working Group.

3.4 Public at large

27. A key element in an effective anti-corruption campaign is the sharing of information and experience on national, regional and international developments and initiatives taken by countries, international organisations, and civil society. The OECD created one of the world’s largest information centres on corruption and bribery, the OECD Anti-Corruption Ring Online or AnCorRR. Its aim is to facilitate the flow of information, to broaden participation in the core anti-corruption values of the OECD, and to foster continuous dialogue. The web site contains more than 3,000 references to books, journals, papers, and other articles, as well as downloadable or on-line anti-corruption documentation, such as laws, international conventions, anti-corruption strategies and other information. The web site is continually updated and maintained and is expected to grow over the next two years.

IV. Priorities

28. Council has agreed on a new, reinforced system of prioritisation by committees [see C(99)204/FINAL] including the identification of the impact of a possible 3 per cent reduction or increase in resources. The primary objective of the mechanism is to facilitate the identification of high and low priority activities and thereby the scope for potential resource reallocation among (Part I) activities of the OECD.

29. In accordance with the internal guidelines developed to implement the resource allocation system, the total budget allocated to the servicing of the Working Group can be estimated at 2.4 million francs (on the basis of the proposed 2000 budget, that serves as baseline indicator in this process). This total includes the cost of dedicated staff (around 90 per cent of the total), an allocation of DAFFE management costs, and the so-called decentralised financial resources (basically funding for missions and consultants). An additional 400,000 French Francs was made available on an exceptional basis from the Central Priorities Fund of the Secretary-General. On this basis, a 3 per cent adjustment comes to approximately 84,000 French francs.

30. In response to this request for prioritisation, the Group adopted the basic operating assumption that the top priority activity(ies) would benefit from an additional three per cent, and the bottom activity(ies) would be selected for the minus three per cent scenario.

V. Sources of Funds in 2001-2002

Current funding and current staffing

31. The current pressure on resources is unsustainable. In addition to 2.4 M FF budgetary allocation for the Bribery work and the exceptional 400,000 FF from the Central Priorities Fund, the servicing of the Group has relied on a voluntary contribution of 1.2 M FF. The heavy reliance on exceptional funds and voluntary contributions makes it extremely difficult to plan beyond a one-year horizon.

32. Current staffing includes 1 A4, 1 A3, 1 A3(CCNM outreach post), and 1 B3. Voluntary contributions fund one consultant, and a part-time research assistant.
Response to requests for voluntary contributions

33. One country is examining the possibility of renewing its voluntary cash contribution for 2001. Another country has pledged a secondment for a period of two years, beginning in the Fall 2000.

Proposal for 2001

   a) No increase in budgetary resources

34. In line with the Group’s discussion of priorities summarised in the Table in Annex 1, and as an indication of the distribution of resources in the case of no increase in existing budgetary resources, it is estimated that the only activities which could be carried out in 2001 would be the activity relating to monitoring, and one activity under outreach. This takes account of the commitment of a secondee but not any cash voluntary contributions which are not yet pledged.

   b) Increase in resources

35. To carry out the activities of the Working Group and to fulfil current mandates, the Group agreed to request additional resources as follows:

   - Creation of 1 professional staff post
   - Creation of 1 project staff post (funded from regular budget resources)
   - Creation of 1 support staff post

36. The current Resource Allocation Mechanism which has been put in place by the Secretary-General provides the opportunity for a shifting of resources from low to high priority activities across the Organisation. Nevertheless, a request for an increase in regular budgetary resources will need to obtain the support of the Secretary-General and the Council. If no additional resources are forthcoming, the Group would need to consider other alternative means for funding.
## ANNEX 1: PROPOSED ACTIVITIES

<table>
<thead>
<tr>
<th>Activities</th>
<th>Resource Intensiveness</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Implementation of the Convention</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Monitoring (Phase 1, Phase I+ and Phase 2)</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>1.2 Comparative Legal Analysis</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>1.3 Report to Ministers</td>
<td>Medium</td>
<td>High</td>
</tr>
<tr>
<td><strong>2. Issues relating to specific mandates</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Review of the 1997 Recommendation (Stock-taking)</td>
<td>Medium</td>
<td>High</td>
</tr>
<tr>
<td>2.2 Five Issues relating to corruption</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>2.3 Reviewing developments in anti-corruption activities</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>2.4 Issues in discussion with the private sector</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td><strong>3. Outreach and co-operation with other international organisations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1 Accession of non-members</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>3.2 Regional co-operation</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>3.3 Consultations with governmental and non-governmental organisations</td>
<td>Low to medium</td>
<td>Low</td>
</tr>
<tr>
<td>3.4 Public at large</td>
<td>Medium</td>
<td>Low</td>
</tr>
</tbody>
</table>